IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8422 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INDUSTRIAL DEVELOPMENTCORPORATION

Versus

S S PATEL

Appearance:

1. Special Civil Application No. 8422 of 1999

MR MB GANDHI for Petitioner No. 1

MRS TRUSHA M GANDHI for Petitioner No. 1

MR RV DESAI for Respondent No. 1-9,11-18,20-27

RULE SERVED for Respondent No. 10,19

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 23/09/2004

ORAL JUDGEMENT

In this petition, the petitioner has challenged

the legality of the order dated 30th April 1999 passed by the Labour Court, Ahmedabad in Recovery Application No.960/87.

2. Short facts leading to the present petition are that the respondents herein who were engaged as work-charge helpers by the petitioner had approached the Labour Court by filing Recovery Application No.960/87 seeking salary of Pump Operators on the ground that they are discharging the same duty but are being paid the wages of Work-charge helpers.

3. Before filing the said recovery application, it appears that a writ petition was filed before this High Court being Special Civil Application No.4279/86 which came to be disposed of by the order dated 8th September 1986 wherein a Division Bench of this High Court was pleased to hold that the prayers of the petitioners therein would require necessary examination whether each of them or how many of them are performing duties and functions of electric pump operators and the proper course, therefore, would be to avail of alternative remedy available to them under the Industrial Disputes Act.

4. It appears that the respondents herein had approached the Conciliation Officer with the prayer to grant the work-charge helpers the post of pump operators. The appropriate Government, however, on failure report, chose not to refer the dispute for adjudication on twin grounds of the demand not having raised through a recognized Union and that the workmen are not engaged on permanent basis and they are terminated upon completion of the work. The respondents, thereafter, approached the Labour Court by filing Recovery Application No.960/87 and contended that they are doing the same work as that of the pump operators and that they are entitled to the salary attached to the said post. Before the Labour Court, the petitioner herein filed a written statement and contested the claim. It was, specifically contended that the respondents are not entitled to any relief. It was denied that the petitioner takes work of pump operators from the respondents. Though it was admitted that there are about 120-140 electric pumps, it was denied that thee were only 20 to 25 electric pump operators.

5. The Labour Court, proceeded to examine the claim of the respondents and after recording the evidence on behalf of the workmen as well as the petitioner-Corporation, by the impugned order was pleased

to hold that the workmen are entitled to salary of electric pump operators including the pay revisions made applicable from time to time and directed the petitioner to pay the difference on the basis of the above findings to the workmen.

6. Appearing for the petitioner, learned advocate Shri M.B.Gandhi has challenged the authority of the Labour Court to pass the said order in Recovery Application without there being any adjudication of the disputed questions. He submits that in absence of any pre-existing rights, the Labour Court could not have entertained the recovery application and passed the impugned order. In support of his contention, learned counsel Shri Gandhi has placed reliance on a decision of the Supreme Court in the case of P.K.Singh v. Presiding Officer, AIR 1988 SC 1618.

7. On the other hand, appearing for the respondents, learned counsel Shri R.V.Desai has tried to support the decision of the Labour Court. He contends that when the workmen tried to raise the dispute before the Labour Court, the petitioner opposed the same due to which the reference was not made by the Government. He has further submitted that there was sufficient evidence on record for the Labour Court to come to the conclusion that the respondents though designated as work-charge helpers were doing the work of pump operators and on the principles of "equal pay for equal work", respondents are entitled to the salary for the post of pump operators.

8. Relying on the decision in the case of M.P.Bhoi v. Patel Piyushbhai, 2003(3) GLR 2012, Shri Desai has submitted that the jurisdiction of this Court exercising powers under Article 227 of the Constitution of India is extremely limited. He submits that unless jurisdictional error is committed by the Labour Court, this Court in exercise of powers under Article 227 of the Constitution of India should not interfere with the same. Shri Desai has also placed reliance on decision of of this Court in the case of G.W.S. & S. Board v. K.D.Pandya, reported in 2001 (2) GLR 1829 and also the decisions of the Hon'ble Supreme Court reported in AIR 1984 SC 38 (Mohd. Yunuis v. Mohd. Mustaquim) and 1972 LAB.I.C. 864 (Ahmedabad Mfg. & Calico Ptg. Co. v. Ramtahel) to point out the limitation of the High Court while exercising powers under Article 227 of the Constitution of India. Learned counsel has submitted that when the witness of the petitioner in his cross-examination admitted that the short-fall of pump operators and that the said work was therefore being done by the Work-charge

helpers, there is no further requirement of adjudication of rights.

9. The Hon'ble Supreme Court in the case of State Bank of India v. Ram Chandra Dubey, AIR 2000 SC 3734, has held that the proceedings under section 33-C(2) are for enforcing pre-existing benefit or one flowing from pre-existing right and the difference between the pre-existing right or benefit on one hand and the right or benefit which is considered just and fair on the other hand is vital. The former falls within the jurisdiction of the Labour Court exercising powers under section 33-C(2) of the Act while the latter does not. In para 8 of the said decision, following observations have been made:

"8. The principles enunciated in the decisions referred by either side can be summed up as follows:

Whenever a workman is entitled to receive from his employer any money or any benefit which is capable of being computed in terms of money and which he is entitled to receive from his employer and is denied of such benefit can approach Labour Court under Section 33C(2) of the Act. The benefit sought to be enforced under Section 33C(2) of the Act is necessarily a pre-existing benefit or one flowing from a pre-existing right. The difference between a pre-existing right or benefit on one hand and the right or benefit, which is considered, just and fair on the other hand is vital. The former falls within jurisdiction of Labour Court exercising powers under section 33C(2) of the Act while the latter does not. It cannot be spelt out from the award in the present case that such a right or benefit has accrued to the workman as the specific question of the relief granted is confined only to the reinstatement without stating anything more as to the backwages. Hence that relief must be deemed to have been denied, for what is claimed but not granted necessarily gets denied in judicial or quasi-judicial proceeding. Further when a question arises as to the adjudication of a claim for backwages all relevant circumstances which will have to be gone into, are to be considered in a judicious manner. Therefore, the appropriate forum wherein such question of backwages could be decided is only in a proceeding to whom a reference under section 10 of the Act is made. To state that merely upon

> reinstatement, a workman would be entitled, under the terms of award, to all his arrears of pay and allowances would be incorrect because several factors will have to considered, as stated earlier, to find out whether the workman is entitled to backwages at all and to what extent. Therefore, we are of the view that the High Court ought not to have presumed that the award of the Labour Court for grant of backwages is implied in the relief of reinstatement or that the award of reinstatement itself conferred right for claim of backwages."

10. In view of the above settled legal position, I find that the Labour Court has clearly erred in granting the prayers made by the respondent without there being any pre-adjudication of their rights especially when the petitioner had contested the claims by filing an affidavit and examining witnesses. In fact, Shri Chandravadan Ambalal Parikh, on whose evidence in cross-examination, the learned advocate for the respondent has sought to place reliance, had stated before the Labour Court in his examination-in-chief that it is wrong that the workers were engaged as work-charge helpers and work of pump-operators were being taken from them.

11. Even otherwise, the question of how many workmen were employed for what period as pump operators has nowhere been established before the Labour Court nor could it have been adjudicated in proceedings under section 33-C(2) of the Industrial Disputes Act. The question of being paid the wages attached to the post of Pump Operator simply because the work-charge helpers have performed the duty of pump operator for some time is also highly debatable and would depend upon several factors such as, service regulations, the nature and extent of work performed by work-charge helpers, the educational qualification and other qualifications held by them and number of other attendant circumstances. On all these grounds, it was not possible for the Labour Court in the recovery proceedings to examine the entitlement of the workmen to seek the pay of the pump operator simply on the ground that they have been performing their duties and that therefore on the principles of "equal pay for equal work" they are entitled to the said benefits. Learned advocate for the petitioner has rightly placed reliance on the decision of the Hon'ble Supreme Court in the case of P.K.Singh (supra) wherein the Hon'ble Supreme Court was pleased to hold that the relief of classification of B-Grade fitter even though they had

been appointed as C-Grade fitter on the ground that they have been performing their duties which were similar to that of B-Grade fitters could not have been entertained in application under section 33-C(2) of the Industrial Disputes Act. On all these grounds, I find that the Labour Court exercised its jurisdiction not vested in it. Therefore, the limitation of powers under Article 227 of the Constitution of India, as argued by the learned advocate for the respondent, would not inhibit this Court in striking down the said order. The recovery application without there being any pre-adjudication of the rights of the respondents, therefore, could not have been entertained and only after the claims of the workmen are adjudicated upon and decided by the competent forum under the Industrial Disputes Act, the workmen can seek recovery.

12. It is unfortunate that earlier when an attempt was made to raise an industrial dispute, the same failed at the stage of appropriate Government refusing to make reference. Since I am allowing this petition and setting aside the order of the Labour Court, on the ground that recovery can be sought only after the demands of the workmen are adjudicated by the competent Labour Court/Industrial Tribunal by upholding the objection of the learned advocate for the petitioner, it will not be open for the petitioner to raise any dispute with respect to making of such a reference, if so raised by the workmen.

13. In the result, the petition is allowed. The impugned order of the Labour Court dated 30th April, 1999 is quashed and set aside. Rule is made absolute accordingly.

(Akil Kureshi, J.)
(vjn)